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September 9, 2010

BY E-FILING

**Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001**

227758

**Re: Docket No. FD 35393, Providence and Worcester Railroad
Company – Petition for Declaratory Order – Gardner Branch**

Dear Ms. Brown:

**Enclosed for filing in the above-referenced proceeding please find
National Grid's Motion to Strike certain portions of the Reply filed by Providence
& Worcester Railroad Company on September 7, 2010.**

Please provide electronic receipt of this filing. Thank you.

Respectfully submitted,



Christopher A. Mills

**CAM:lad
Enclosure**

cc (w/enclosure): Counsel for parties of record per Certificate of Service

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**PROVIDENCE AND WORCESTER
RAILROAD COMPANY – PETITION
FOR DECLARATORY ORDER –
GARDNER BRANCH**

)
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) Docket No. FD 35393
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**MOTION TO STRIKE PORTIONS OF
PROVIDENCE AND WORCESTER RAILROAD COMPANY’S
REPLY TO NATIONAL GRID’S REQUEST FOR PROCEDURAL
SCHEDULE AND PROTECTIVE ORDER**

New England Power Company d/b/a National Grid (“National Grid”) hereby moves the Board to strike portions of Providence & Worcester Railroad Company’s (“P&W”) Reply to National Grid’s request for a procedural schedule and protective order in this proceeding, which Reply was filed on September 7, 2010. Specifically, National Grid requests the Board to strike Parts II and III on pp. 3-8 of P&W’s Reply on the ground that the discussion in these sections constitutes a reply to a reply which is impermissible under 49 CFR § 1104.13(c).

P&W’s Petition for Declaratory Order in this proceeding (“Petition”) was filed on July 20, 2010. On August 30, 2010, National Grid filed a Reply to P&W’s Petition (“National Grid Reply”) in which it discussed the statute and caselaw on federal preemption of state laws affecting certain aspects of rail transportation and demonstrated that the Board must consider and resolve certain factual issues before it can rule on the merits of the Petition. National Grid’s Reply also requested the Board to institute a

proceeding and issue a procedural schedule for the receipt of evidence and argument on the issues involved.¹ National Grid separately filed a Motion for Protective Order to govern the production and use of confidential information.

While P&W is entitled to file a reply to National Grid's Motion for Protective Order, and to include a response as to whether it agrees with the procedural schedule proposed by National Grid, P&W's Reply goes much farther than this. It responds substantively to the discussion in the National Grid Reply of the legal standards governing the Board's consideration of federal preemption issues of the kind raised by the Petition. It also responds substantively to the discussion in the National Grid Reply regarding the potential conflict between FERC oversight of electric grid reliability (which implicates the Massachusetts statute in issue) and the Board's jurisdiction over certain aspects of railroad operations. Thus, in the guise of replying to National Grid's Motion for Protective Order and commenting on the proposed procedural schedule,² P&W has improperly attempted to submit a reply to the National Grid Reply.

P&W's Reply also expresses disagreement with (1) factual statements in the National Grid Reply, (2) National Grid's representations as to its willingness to work with P&W to find a mutually acceptable means of enabling P&W to build a second track

¹ The proposed schedule is modeled on the procedural schedule adopted by the Board in Finance Docket No. 35305, *Arkansas Electric Cooperative Corporation – Petition for Declaratory Order* (STB served December 1, 2009), except that National Grid has proposed a shorter time frame given the more limited nature of this proceeding compared with Finance Docket No. 35305.

² It should be noted that P&W's Reply neither discusses nor expresses any disagreement with either the specific procedural schedule or the terms of the protective order proposed by National Grid.

between Worcester and Barbers (which may entail relocation of the transmission line in issue) without unnecessary delay, and (3) National Grid's arguments on the legal standards governing federal preemption in a case such as this.³ In addition to constituting an impermissible reply to a reply, P&W's statements of disagreement on these issues serve to underscore that this is not as simple a case as P&W would have the Board believe, and actually confirm that a proceeding should be instituted to consider the significant factual and legal issues implicated by the Petition.

For the foregoing reasons, the Board should grant National Grid's motion to strike Parts II and III of P&W's Reply.

Respectfully submitted,

NEW ENGLAND POWER COMPANY d/b/a
NATIONAL GRID

By: Bess B. Gorman
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³ P&W contends that the decisions cited on pp. 3-4 of its Reply reflect a *per se* preemption rule with respect to certain kinds of state permitting or preclearance requirements that affect rail transportation. As National Grid will show in the merits phase of this proceeding, the Massachusetts law in issue here is not the kind of permitting or preclearance requirement that can be deemed preempted without considering whether its application would unreasonably impact P&W's ability to conduct rail operations.

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Dated: September 9, 2010

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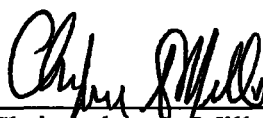
CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of September, 2010, I caused a copy of the foregoing Motion to Strike to be served by email on counsel for Petitioner Providence & Worcester Railroad Company, as follows:

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